TUNKU ABDUL RAHMAN PUTRA AL-HAJ & ORS. v. DATO SERI DR. MAHATHIR MOHAMAD & ANOR.

[O.C.J. (Ajaib Singh J.) 12 April 1988]

[Kuala Lumpur – Suit No. S7-22-79 of 1988]

Societies – Political party declared unlawful – Registration approved for re-formed party – Formation of another political party – Application for registration refused – Interim injunctions sought by unregistered political party against registered re-formed party from carrying out certain activities – Application without merit or substance – Application dismissed.

UMNO, which was a registered society under the Societies Act 1966, was declared an unlawful party by the High Court on 4 February 1988 because it contravened the provisions of the Societies Act (see [1988] 2 M.L.J. 129). Following the cancellation of the registration of UMNO by the Registrar of Societies, the defendants formed a political party called UMNO Baru and were elected as president and secretary-general of the party. This was subsequently registered as a society under the Societies Act.

Meanwhile, the plaintiffs proceeded to form a new political party to be named as UMNO Malaysia. The plaintiffs were elected as the president, deputy president and the treasurer of UMNO Malaysia. The plaintiffs attempted to register their new political party under the Societies Act but the application was rejected by the Registrar of Societies.

D, the secretary-general of UMNO Malaysia, applied to the High Court for leave to issue an order of certiorari to quash the decisions of the Registrar of Societies in rejecting the registration of UMNO Malaysia and in registering UMNO Baru as a society. Pending the determination of D's application, the plaintiffs filed this suit seeking the following three interim injunctions against the defendants to restrain (a) UMNO Baru from issuing membership application forms or accepting as members of UMNO Baru any former UMNO members (b) UMNO Baru from making any statement concerning the plaintiffs or members of the pro tem committee of the plaintiffs' proposed formation of UMNO Malaysia (c) UMNO from transferring or dealing with any of the assets and liabilities of UMNO.

Held, dismissing the application: (1) the application for the interim injunction is without any merit or substance. There is no justification for UMNO Malaysia whose existence is shrouded in uncertainty to apply for the interim injunctions against UMNO Baru which is lawfully registered under the Societies Act;

(2) as to the first injunction prayed for, the plaintiffs cannot restrain UMNO Baru from recruiting members. By issuing membership application forms in its drive to recruit members, UMNO Baru is doing no more than pursuing its legitimate aims and aspirations as a lawful political party registered under the Societies Act. Even if UMNO Malaysia gets itself registered under the Societies Act, it cannot stop UMNO Baru from continuing with UMNO Baru's membership drive – just as UMNO Baru can have no right to stop UMNO Malaysia from recruiting members;

(3) as to the second injunction, it would be wrong and even preposterous for the court to restrain the defendants from making statements concerning UMNO Malaysia. Freedom of speech and expression is guaranteed under the Federal Constitution. Political parties are free to make statements on matters of public concern and on the contemporary political situation and these statements may well touch on the activities of other political parties as long as such statements do not contravene the law such as sedition or defamation;

(4) when a society is cancelled under the Societies Act, all the assets and liabilities of the society become vested in the Official Assignee and he is duty-bound to deal with them in accordance with the provisions of the Societies Act. Under the proposed amendments to the Societies Act, a fair and just provision is provided in section 17B which contains ample safeguards for members of any cancelled society in respect of their rights and obligations in the assets and liabilities of the cancelled society. Thus, the application for the third injunction cannot stand.

CIVIL SUIT.

Muhammad Shafee bin Abdullah (*Christina Kow (Miss)* with him) for the plaintiffs.

Zaki Tun Azmi (*Juliana Solomon (Miss)* and *Cheong Wee Wong* with him) for the defendants.

Cur. Adv. Vult.

Ajaib Singh J.: On 1 April 1988, the plaintiffs filed a writ of summons with a statement of claim seeking three injunctions against the defendants pending the hearing of an originating motion filed in the High Court on 10 March 1988 by Datuk Rais Yatim in his capacity as the pro tem secretary of a proposed society to be known as UMNO Malaysia.

The brief facts leading to the present suit and the originating motion filed by Datuk Rais Yatim appear to be as follows. UMNO which was a component of the governing Barisan Nasional and registered as a society under the Societies Act 1966 was declared unlawful by the High Court on 4 February 1988 because it had contravened certain provisions of the Societies Act. On 7 February 1988, the plaintiffs together with several other people proceeded to form a new political party to be named as UMNO Malaysia. A pro tem committee was elected. The first plaintiff was named as the president, the second plaintiff as the deputy president and the third plaintiff as the treasurer. On 8 February 1988 this pro tem committee applied for registration under the Societies Act but the application was rejected by the Registrar of Societies on 10 February 1988. On 9 March 1988 the pro tem committee appealed against this rejection to the Minister of Home Affairs whose decision is pending.

Meanwhile, following the decision of the High Court on 4 February 1988, the Registrar of Socie-

ties cancelled the registration of UMNO on 12 February 1988. And on 13 February 1988 UMNO Baru was duly registered as a society under the Societies Act on the application made by the first defendant and Abdul Ghafar bin Baba, the pro tem deputy president of UMNO Baru.

In another development, Datuk Rais Yatim in his capacity as the pro tem secretary-general of the proposed UMNO Malaysia applied to the High Court on 10 March 1988 for leave to issue an order of certiorari to quash the decision of the Registrar of Societies in rejecting the registration of UMNO Malaysia and for a further order to direct the Registrar to hear the application of UMNO Malaysia for registration under the Societies Act. Datuk Rais Yatim also sought leave to obtain an order of certiorari to quash the decision of the Registrar to register UMNO Baru as a society and an order that the Registrar removes UMNO Baru from the Register of Societies.

The application of Datuk Rais Yatim came up for hearing on 14 March 1988 but this was adjourned by the High Court pending the outcome of the appeal which the pro tem committee of UMNO Malaysia had made on 9 March 1988 to the Minister of Home Affairs against the decision of the Registrar of Societies rejecting UMNO Malaysia's application for registration.

And now pending the hearing and determination of their claim for permanent injunctions which the plaintiffs have filed in this suit, they seek three interim injunctions. First, to restrain UMNO Baru from issuing membership application forms or accepting as members of UMNO Baru any former members of UMNO. Secondly, to restrain UMNO Baru from making any statement, oral or written, concerning the plaintiffs or the members of the pro tem committee of the plaintiffs' proposed formation of UMNO Malaysia. Thirdly, to restrain UMNO from transferring or dealing with any of the assets and liabilities of UMNO.

After giving due consideration to the affidavit evidence and the submissions made by counsel for the parties, I have come to the conclusion that the application for the interim injunctions which the plaintiffs seek against the defendants is without any merit or substance. There is no basis whatsoever on which the court can grant the injunctions. There is no justification for UMNO Malaysia whose existence is shrowded in uncertainty to apply for the interim injunctions against UMNO Baru which is lawfully registered under the Societies Act. The application for the interim injunctions must therefore be dismissed.

The plaintiffs cannot restrain UMNO Baru from recruiting members. By issuing membership application forms in its drive to recruit members UMNO Baru is doing no more than pursuing its legitimate aims and aspirations as a lawful political party registered under the Societies Act. On the other hand the position of the proposed UMNO Malaysia is far from stable. Its application for registration under the Societies Act stands rejected and an appeal against its rejection is pending before the Minister of Home Affairs. Even if UMNO Malaysia gets itself registered under the Societies Act, it cannot stop UMNO Baru from continuing with UMNO Baru's membership drive – just as UMNO Baru can have no right to stop UMNO Malaysia from recruiting members.

Secondly, it would be wrong and even preposterous for the court to restrain the defendants from making statements concerning UMNO Malaysia. Freedom of speech and expression is guaranteed under the Federal Constitution. Political parties are free to make statements on matters of public concern and on the contemporary political situation and these statements may well touch on the activities of other political parties so long as such statements do not contravene the law such as sedition or defamation.

Thirdly, on the plaintiffs' claim that the defendants be restrained from dealing with the assets and liabilities of the old UMNO, I agree entirely with Encik Zaki Tun Azmi on this point. When a society is cancelled under the Societies Act, all the assets and liabilities of the society become vested in the Official Assignee and he is duty-bound to deal with them in accordance with the provision of the Societies Act. And now under the proposed amendments to the Societies Act a fair and just provision is provided in section 17B which contains ample safeguards for members of any cancelled society in respect of their rights and obligations in the assets and liabilities of the cancelled society.

On the material before me in this case, I would say that the plaintiffs do not appear to have a real prospect of succeeding in their claim for permanent injunctions which they have filed against the defendants in their writ of summons. They cannot therefore obtain interim injunctions pending trial of the suit proper. And if I have to decide on the question of the balance of convenience I would say that the evidence indicates that the balance lies in favour of the defendants and against the granting of the interim injunctions. The pending application by Datuk Rais Yatim is quite independent of the present proceedings and has no

relevance to the application by the plaintiffs for the injunctions which they seek against the defendants. The application for the interim injunctions is dismissed with costs.

Order accordingly.

Solicitors: *Shafee & Co.; Rashid & Lee.*

GOVERNMENT OF MALAYSIA v. CHONG WOO YIT

[A.C.J. (Wan Yahya J.) 2 March 1988]

[Malacca – Civil Suit No. 1441 of 1985]

Revenue Law – Additional income tax assessments made after a lapse of 12 years – Whether limitation provision in Income Tax Act 1967 contravened – Whether tax statute-barred – Income Tax Act 1967, s. 91 – Limitation Act 1953, s. 33.

The Inland Revenue Department ("the Revenue") made some additional assessments in respect of the appellant's income for the previous years of assessments. The additional assessments were made retrogressively, the last mentioned year being a period of 16 years and the first mentioned date going right back to about 26 years from the date on which the actual additional assessments were computed. The Revenue took out an application under Order 14 of the Rules of the High Court for summary judgment for the recovery of these additional assessments. The senior assistant registrar granted summary judgment against the appellant. The appellant appealed against this decision to the High Court.

The appellant contended that: (a) the additional assessments made after the lapse of 12 years contravene the limitation period as contained in section 91 of the Income Tax Act 1967 and is therefore statute-barred; (b) summary judgment is not available to the Revenue in this instance because its claim is based on the allegation of fraud.

Held, dismissing the appeal: (1) the Revenue action under section 91 of the Income Tax Act 1967 can go beyond any period of limitation by virtue of section 33 of the Limitation Act 1953 and, alternatively, they can do likewise under section 91(1) and (2) on the basis of wilful default and negligence or by establishing fraud to postpone limitation;

(2) the word "fraud" did not appear in the Revenue's statement of claim nor in any of the supporting affidavits filed in the Order 14 application. It is obvious from the words used in the statement of claim that the claim was based on "negligence" under section 91(3)(b) and not fraud.

Case referred to:

(1) *Arumugam Pillai* v. *Government of Malaysia* [1976] 2 M.L.J. 72 (folld).

APPEAL FROM REGISTRAR'S DECISION.

Chong Kim Kong for the appellant/defendant.

Shaharuddin Ali (Senior Federal Counsel) for the respondent/plaintiff.

Cur. Adv. Vult.

Wan Yahya J.: The facts leading to this appeal may be shortly summarized as follows. On 16 March 1985, the Inland Revenue Department ("the Revenue") made additional assessments in respect of the appellant's (taxpayer) income for the previous years of assessments for the following amounts:

Year of Assessment 1959 for additional tax of	$20.04
Year of Assessment 1961 for additional tax of	$15,301.60
Year of Assessment 1963 for additional tax of	$1,831.95
Year of Assessment 1964 for additional tax of	$4,538.70
Year of Assessment 1965 for additional tax of	$7,054.00
Year of Assessment 1966 for additional tax of	$62,276.50
Year of Assessment 1968 for additional tax of	$8,329.75
Total	$99,352.54

It is notable from the above that the additional assessments were made retrogressively, the last mentioned year being a period of 16 years and the first mentioned date going right back to about 26 years from the date on which the actual additional assessments were computed. Notices of the assessments were posted to the appellant on the same date. On 21 December 1985, the Revenue took out a writ of summons against the taxpayer for a sum, which after the addition of penalties for late payments, amounted to $114,749.03.

On 3 November 1986, the Revenue filed a summons-in-chambers for an application under Order 14 for a sum of $112,035.70, being the amount claimed in the writ less $2,713.33 paid by the taxpayer during the intervening period.

After hearing the matter in chambers, the learned senior assistant registrar entered summary judgment for the amount claimed by the Revenue. The taxpayer appealed against that decision.

Substantially the same arguments as raised before the learned senior assistant registrar have been placed before me. Mr. Chong, for the taxpayer, contends that such additional assessments made after the lapse of 12 years contravene the limitation as contained in section 91 of the Income Tax Act and are, therefore, statute-barred. Second-